IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.671/2006

Reserved on.21.6.2007

Decided on. July 12, 2007

Chairman Baba Balak Nath Trust. …Petitioner.

Versus

Rakesh Kumar and another. …Respondents

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*.No*

For the petitioner : **Mr. K.D. Sood, Advocate.**

For the respondent No.1. **Mr. Rajnish Maniktala, Advocate.**

Rajiv Sharma, J.

A challenge has been laid to the award dated 16.5.2005 passed by the Labour Court-cum-Industrial Tribunal, Dharamshala in reference No.139/2001.

The brief facts necessary for the adjudication of this petition are that after the conciliation proceedings have failed, the State Government had made the following reference on 23rd July, 2001 to the Labour Court-cum-Industrial Tribunal, Dharamshala:

> **"Whether the retrenchment of services of Shri Rakesh Kumar, workman S/O Sh. Uttam Chand, Village Dhanpur, PO Lahad, Teh. Nadoun, Distt. Hamirpur by the Chairman, Baba Balak Nath Temple Trust, Deot-Sidh, Teh. Barsar, Sub Divisional Officer (Civil) Sub Division Barsar, Distt. Hamirpur vide retrenchment notice 06.11.1998 and w.e.f. 16.12.1998 by complying section 25 (F) but without complying section 25 (N)**

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? No

of the Industrial Disputes Act, 1947 is legal and justified. If not, to what relief of back wages, seniority and other service benefits the above workman is entitled to?

In sequel to the reference made by the State Government, the respondent (hereinafter referred to as the workman) had filed the statement of claim before the Labour Court. He had primarily stated in his statement of claim that he was terminated with effect from 16.12.1998 vide notice dated 6.11.1998. He had also stated that he was performing the work which was of continuous and permanent in nature. The management i.e. petitioner-temple had also filed reply to the claim petition. The Labour Court had answered the reference in the affirmative vide award dated 16.5.2005.

Mr. K.D. Sood, Advocate appearing on behalf of the petitioner had strenuously argued that the award dated 16.5.2005 is not sustainable in the eyes of law.

Mr. Rajnish Maniktala, Advocate had supported the award dated 16.5.2005 passed by the Presiding Judge, Labour Court-cum-Industrial Tribunal, Dharamshala.

I have heard the parties and perused the record.

The workman had appeared as PW-1 before the Labour Court and had testified that he was engaged as daily wager (Langar Sahayak) by the management with effect from 21.6.1997 upto 16.12.1998. He had stated that his services were terminated after retaining his juniors namely, Baldev Singh, Ajay Kumar, Hans Raj, Sanjay Kumar, Kashmir Singh, Vikram Singh, etc. The management had produced one Shri Raj Kumar, Junior Assistant as RW-1. He had stated that the services of the workman were terminated vide notice Ex.RW-1/A and he was paid an amount of Rs. 1530/- which was accepted by the workman. In his cross-examination he had shown his ignorance that the workman worked from 10.3.1997 to

16.12.1998, but he admitted that the strength of the workmen of the management was more than 121 persons. He had admitted in his cross-examination that the work against which the workman had been working was of regular nature. He had shown his ignorance that the persons, junior to the workman, were still working at the time of issuance of notice to the workman.

The Labour Court had proceeded with the matter on two premises. Firstly, there was violation of section 25-F of the Industrial Disputes Act, 1947. The Labour Court had noticed that Ex. RW-1/A was typed and signed on 6.11.1998, but it was received by the workman on 18.11.1998 and if the workman had received the notice on 18.11.1998, his dis-engagement has come into force from 15.12.1998 and the condition of one month notice was not fulfilled. What the Labour Court wanted to convey that the retrenchment should have come into force from 17.12.1998. Secondly, the Labour Court had held that since there were more than 121 workmen employed by the management which fact was also supported by RW-1 in his cross-examination, the notice under section 25-N of the Industrial Disputes Act, 1947 was required to be issued to the workman. Admittedly no notice under section 25-N of the Industrial Disputes Act had been issued to the workman while effecting his retrenchment and accordingly, the Labour Court had come to a just conclusion that the retrenchment of the workman was illegal. The management had not controverted the statement made by the workman that the persons, namely, Baldev Singh, Ajay Kumar, Hans Raj, Sanjay Kumar, Kashmir Singh, Vikram Singh, etc, who were juniors to him were retained at the time of his retrenchment in violation of section 25-G of the Industrial Disputes Act, 1947. The reason assigned in notice dated 6.11.1998 was that there was no work available against which the

workman could be deputed. Sh Raj Kumar Junior Assistant while appearing as RW-1 had admitted in his cross-examination that the work against which the workman was working was of continuance in nature.

The upshot of the above discussion is that the Labour Court had come to the just conclusion that the retrenchment of the workman with effect from 17.12.1998 as per Ex.RW-1/A was illegal. Similarly the Labour Court had come to the right conclusion that since more than 121 workmen were employed by the management, the workman was entitled to the protection of section 25-N of the Industrial Disputes Act, 1947. The management had only issued the notice to the workman under section 25-F of the Industrial Disputes Act, 1947, which was also defective as the same was not in accordance with law. The reasons assigned for effecting retrenchment of the workman with effect from 17.12.1998 were not factually correct as the work against which the workman was engaged, was still available. The management had not denied that the workmen junior to the workman at the time of his retrenchment i.e. 17.12.1998, namely, Baldev Singh, Ajay Kumar, Hans Raj, Sanjay Kumar, Kashmir Singh, Vikram Singh, etc. were not retained.

Accordingly there is no merit in the writ petition and the same is dismissed with no order as to costs.

(Rajiv Sharma), Judge

July 12, 2007
Awasthi